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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GMYL, L.P., a California limited partnership;

Plaintiff,

vs.

ERNESTO COPPOLA, an individual; COPPOLA
FOODS LIMITED, a foreign company; and
DOES 1 THROUGH 10

Defendants.

CASE NO. 13-cv-04739-RS

**STIPULATED PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS,
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public disclosure
 4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 5 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
 7 or responses to discovery and that the protection it affords from public disclosure and use extends
 8 only to the limited information or items that are entitled to confidential treatment under the applicable
 9 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
 10 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
 11 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
 12 standards that will be applied when a party seeks permission from the Court to file material under
 13 seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
 as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it
 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
 2 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
 3 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
 4 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
 5 competitor.

6 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
 7 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
 8 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
 9 means.

10 2.8 House Counsel: attorneys who are employees of a party to this action but does not
 11 include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
 13 entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action
 15 but are retained to represent or advise a party to this action and have appeared in this action on behalf
 16 of that party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.11 Party: any party to this action, including all of its officers, directors, employees,
 18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
 20 in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 22 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
 23 or retrieving data in any form or medium) and their employees and subcontractors.

24 2.14 Protected Material: subject to Section 3 below, any Disclosure or Discovery Material
 25 that is designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS'
 26 EYES ONLY."

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 28 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 6 However, the protections conferred by this Stipulation and Order do not cover the following
 7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
 8 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
 9 publication not involving a violation of this Order, including becoming part of the public record
 10 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 11 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 12 information lawfully and under no obligation of confidentiality to the Designating Party.

13 Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 18 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
 20 limits for filing any motions or applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 23 Non-Party that designates information or items for protection under this Order must take care to limit
 24 any such designation to specific material that qualifies under the appropriate standards. To the extent
 25 it is practical to do so, the Designating Party must designate for protection only those parts of
 26 material, documents, items, or oral or written communications that qualify – so that other portions of
 27 the material, documents, items, or communications for which protection is not warranted are not
 28 swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown to
 2 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 3 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 4 other parties) expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it designated for
 6 protection do not qualify for protection at all or do not qualify for the level of protection initially
 7 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
 8 mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 10 e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
 11 Discovery Material that qualifies for protection under this Order must be clearly so designated before
 12 the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but
 15 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 16 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 17 ONLY" to each page that contains protected material. If only a portion or portions of the material on
 18 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
 19 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
 20 protection being asserted. A Party or Non-Party that makes original documents or materials available
 21 for inspection need not designate them for protection until after the inspecting Party has indicated
 22 which material it would like copied and produced. During the inspection and before the designation,
 23 all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 24 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 25 copied and produced, the Producing Party must determine which documents, or portions thereof,
 26 qualify for protection under this Order. Then, before producing the specified documents, the
 27 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 28 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material.

1 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
 2 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 3 margins) and must specify, for each portion, the level of protection being asserted.

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 5 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 6 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 7 impractical to identify separately each portion of testimony that is entitled to protection and it appears
 8 that substantial portions of the testimony may qualify for protection, the Designating Party may
 9 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have
 10 up to 21 days after the deposition to identify the specific portions of the testimony as to which
 11 protection is sought and to specify the level of protection being asserted. Only those portions of the
 12 testimony that are appropriately designated for protection within the 21 days after the deposition shall
 13 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party
 14 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
 15 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 16 ATTORNEYS’ EYES ONLY.”

17 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
 18 other proceeding to include Protected Material so that the other parties can ensure that only
 19 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 20 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 21 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 22 ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title page that
 24 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 25 (including line numbers as appropriate) that have been designated as Protected Material and the level
 26 of protection being asserted by the Designating Party. The Designating Party shall inform the court
 27 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
 28 period for designation shall be treated during that period as if it had been designated “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
 2 expiration of that period, the transcript shall be treated only as actually designated. Notwithstanding
 3 the above, nothing in this provision 5.2(b) shall give any deponent or his/its counsel the right to
 4 exclude entirely from a deposition an opposing party; rather, the parties are required to exclude his or
 5 its opposition in a deposition only to the extent the testimony sought and being given constitutes
 6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

7 (c) for information produced in some form other than documentary and for any
 8 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 9 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
 11 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
 12 the protected portion(s) and specify the level of protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 14 designate qualified information or items does not, standing alone, waive the Designating Party’s right
 15 to secure protection under this Order for such material. Upon timely correction of a designation, the
 16 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
 17 the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
 22 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 23 confidentiality designation by electing not to mount a challenge promptly after the original
 24 designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 26 by providing written notice of each designation it is challenging and describing the basis for each
 27 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 28 recite that the challenge to confidentiality is being made in accordance with this specific Section of

1 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
 2 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
 3 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
 4 explain the basis for its belief that the confidentiality designation was not proper and must give the
 5 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
 6 and, if no change in designation is offered, to explain the basis for the chosen designation. A
 7 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
 8 this meet and confer process first or establishes that the Designating Party is unwilling to participate
 9 in the meet and confer process in a timely manner. Notwithstanding the above, in the event a dispute
 10 arises during the period dedicated for jurisdictional discovery, the parties shall meet and confer
 11 pursuant to the Notice of Reference and Order re Discovery Procedures (Dkt. No. 41), and shall
 12 follow all procedures set forth therein.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 15 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)
 16 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
 17 and confer process will not resolve their dispute, whichever is earlier. Each such motion must be
 18 accompanied by a competent declaration affirming that the movant has complied with the meet and
 19 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
 20 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
 21 automatically waive the confidentiality designation for each challenged designation. In addition, the
 22 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 23 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 24 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 25 competent declaration affirming that the movant has complied with the meet and confer requirements
 26 imposed by the preceding paragraph. Notwithstanding the above, in the event a dispute continues
 27 after a meet and confer session during the period dedicated for jurisdictional discovery, the parties
 28

1 shall make all efforts to make their respective motions to the Court as soon as practicable, and in
 2 accordance with the Notice of Reference and Order re Discovery Procedures (Dkt. No. 41).

3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

4 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 6 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 7 retain confidentiality as described above, all parties shall continue to afford the material in question
 8 the level of protection to which it is entitled under the Producing Party's designation until the Court
 9 rules on the challenge.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 14 the categories of persons and under the conditions described in this Order. When the litigation has
 15 been terminated, a Receiving Party must comply with the provisions of Section 15 (FINAL
 16 DISPOSITION) below.

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 18 secure manner that ensures that access is limited to the persons authorized under this Order. This
 19 shall include but not necessarily be limited to storing in password-protected form any electronic
 20 Protected Material that is stored on any laptop, mobile, or other removable storage device.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
 22 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 23 information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 26 information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, and Professional Vendors to whom

10 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

information or items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,

1 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
 2 whom the procedures set forth in Section 7.4(a)(1), below, have been followed;

3 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
 4 for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be Bound”
 5 (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants and their
 8 staff, mock jurors and Professional Vendors to whom disclosure is reasonably necessary for this
 9 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (f) the author or recipient of a document containing the information or a custodian
 11 or other person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
 13 – ATTORNEYS’ EYES ONLY” Information or Items to House Counsel.

14 (a) Unless otherwise ordered by the Court or agreed to in writing by the
 15 Designating Party, a Party that seeks to disclose to House Counsel any information or item that has
 16 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 17 Section 7.3(b) first must disclose in writing to the Designating Party that (1) sets forth the full name
 18 of the House Counsel and the city and state of his or her residence, and (2) describes the House
 19 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in
 20 sufficient detail to determine if House Counsel is involved, or may become involved, in any
 21 competitive decision-making.

22 (b) A Party that makes a disclosure and provides the information specified in the
 23 preceding respective paragraph may disclose the subject Protected Material to the identified House
 24 Counsel unless, within 14 days of delivering the request, the Party receives a written objection from
 25 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.
 26 Notwithstanding the above, in the event a Party objects to the name shown pursuant to provision
 27 7.4(a), above, then the Parties shall make all efforts to make engage in a meet and confer session as
 28 soon as practicable.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to House Counsel may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to House Counsel is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure. Notwithstanding the above, in the event a dispute continues after a meet and confer session during the period dedicated for jurisdictional discovery, then the Parties shall make all efforts to make their respective motions to the Court as soon as practicable, and in accordance with the Notice of Reference and Order re Discovery Procedures (Dkt. No. 41).

In any such proceeding, the Party opposing disclosure to House Counsel shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its House Counsel or Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non- Party's confidential information responsive to the discovery request. If the Non-
 2 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
 3 possession or control that is subject to the confidentiality agreement with the Non-Party before a
 4 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden
 5 and expense of seeking protection in this Court of its Protected Material.

6 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 8 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 9 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 10 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 11 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 12 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
 13 Bound" that is attached hereto as Exhibit A.

14 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 15 **MATERIAL**

16 In the event that a Producing Party inadvertently or mistakenly produces material that it
 17 believes is subject to a claim of privilege or other protection, such production shall not constitute a
 18 waiver of any claim of privilege or protection. When a Producing Party gives notice to Receiving
 19 Parties that certain inadvertently produced material is subject to a claim of privilege or other
 20 protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
 22 established in an e-discovery order that provides for production without prior privilege review.
 23 Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
 24 effect of disclosure of a communication or information covered by the attorney-client privilege or
 25 work product protection, the parties may incorporate their agreement in the stipulated protective
 26 order submitted to the Court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 no Party waives any right it otherwise would have to object to disclosing or producing any
 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 Party waives any right to object on any ground to use in evidence of any of the material covered by
 this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a
 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 record in this action any Protected Material. A Party that seeks to file under seal any Protected
 Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may
 only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue
 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
 Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
 the Court, then the Receiving Party may file the Protected Material in the public record pursuant to
 Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in Section 4, each
 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
 the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that
 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,

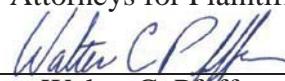
1 abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected
2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
3 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
5 and expert work product, even if such materials contain Protected Material. Any such archival copies
6 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 4 (DURATION).

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: March 10, 2014

/s/ Sharoni S. Finkelstein

10 Attorneys for Plaintiff



11 Walter C. Pfeffer
12 COLT/SINGER/BEA LLP
13 Attorneys for Defendants

DATED: March 9, 2014

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 DATED: 3/11/14



16 RICHARD SEEBORG
17 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, [print or type full name], of [print or type
4 full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *GMYL, L.P. v. Ernesto Coppola et al.*, United States
7 District Court (N.D. Cal.) Case No. 13-cv-04739-RS. I agree to comply with and to be bound by all
8 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
10 that I will not disclose in any manner any information or item that is subject to this Stipulated
11 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19 Date:

20 City and State where sworn and signed:

21 Printed name: _____
22 [printed name]

23 Signature: _____
[signature]

L.R. 5-1(i) ATTESTATION

I, Sharoni S. Finkelstein, am the ECF user whose ID and password are being used to file the parties' STIPULATED PROTECTIVE ORDER. In compliance with Local Rule 5-1(i), I hereby attest that Walter C. Pfeffer, counsel for Defendants, has concurred in this filing.

/s/ Sharoni S. Finkelstein